

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ERNEST FLAGG, as Next Friend
of JONATHAN BOND; TARIS JACKSON,
as Next Friend of ASHLY JACKSON; and
BRIAN GREENE, as Next Friend of
INDIA BOND,

Plaintiffs,

v.

Case No. 05-74253
Hon. Gerald E. Rosen

CITY OF DETROIT, *et al.*,

Defendants.

**ORDER GRANTING DEFENDANTS'
MOTION TO SET ASIDE REQUESTS FOR DEFAULTS**

At a session of said Court, held in
the U.S. Courthouse, Detroit, Michigan
on October 28, 2008

PRESENT: Honorable Gerald E. Rosen
United States District Judge

On September 5, 2008, Plaintiffs filed and served their third amended complaint in this action. Under Fed. R. Civ. P. 15(a)(3), Defendants were required to file responses to this pleading within ten days, but four of them — Defendants City of Detroit, Harold Cureton, Craig Schwartz, and Cara Best — failed to do so. Accordingly, through submissions filed on September 29 and 30, 2008, Plaintiffs have requested that the Clerk

of the Court enter these parties' defaults pursuant to Fed. R. Civ. P. 55(a).¹

On October 1, 2008, the four above-cited Defendants filed their answer to the third amended complaint. Two days later, on October 3, 2008, these Defendants filed the present motion, asking that the Court set aside Plaintiffs' requests for entry of their defaults. As noted in their motion, these four Defendants have been actively engaged throughout this case in the defense of the claims asserted against them, and they timely responded to the second amended complaint, which is similar in all relevant respects to the recently-filed third amended complaint. Under these circumstances, the interests of justice would not be served by entering the defaults of these parties, nor could Plaintiffs plausibly contend that they would be prejudiced if the Court were to accept Defendants' tardy response to the third amended complaint, which was filed just a few days after the relevant deadline. Accordingly,

¹Plaintiffs erroneously state in their requests that Defendants' responses to the third amended complaint were due on or before September 15, 2008. This assertion fails to account for the relevant time computing provisions set forth at Fed. R. Civ. P. 6(a)(2) and 6(d).

NOW, THEREFORE, IT IS HEREBY ORDERED that Defendants' October 3, 2008 motion to set aside requests for clerk's entry of default (docket #155) is GRANTED. IT IS FURTHER ORDERED that the Clerk of the Court need not act upon Plaintiffs' requests for entry of default filed on September 29, 2008 (docket #152) and on September 30, 2008 (docket #153).

s/Gerald E. Rosen
United States District Judge

Dated: October 28, 2008

I hereby certify that a copy of the foregoing document was served upon counsel of record on October 28, 2008, by electronic and/or ordinary mail.

s/LaShawn R. Saulsberry
Case Manager